Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 06-121
	)	MB Docket No. 02-277
2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MM Docket No. 01-235
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-317
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 00-244
	)	
Definition of Radio Markets	)	

COMMENTS OF
OFFICE OF COMMUNICATION OF UNITED CHURCH OF CHRIST, INC.
NATIONAL ORGANIZATION FOR WOMEN
MEDIA ALLIANCE
COMMON CAUSE
BENTON FOUNDATION

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SUMMARY

The Office of Communication of the United Church of Christ, Inc. ("UCC"), the National Organization for Women ("NOW"), Media Alliance, Common Cause, and the Benton Foundation, submit these comments to show that the ownership studies cannot be used to justify relaxation of media ownership limits. If anything, the studies support tightening media ownership limits.

Generally, the studies fail to address many important issues. None of the ten studies justifiy the numerical limits that the *Prometheus* court found to be arbitrary and capricious. While some studies address minority and female ownership, finding that minorities and women are significantly underrepresented in station ownership and that the FCC's current data collection practices are inadequate, they do not consider MMTC's proposals as directed by the court.

The studies also fail to consider a whole host of factors relevant to the public interest analysis required by Section 202(h). The primary purpose of the ownership rules is to foster viewpoint diversity. The Commission has repeatedly found that it is essential to a democracy for the electorate to have access to divergent viewpoints on controversial issues. Yet, few of the studies even attempt to directly address whether the current levels of media concentration provide the public with a true diversity of views on controversial issues. Nor do any examine the impact of the transition to digital taking place that allows both television and radio stations to broadcast multiple program streams.

The studies that do attempt to measure diversity generally find it has decreased under the current rules. For instance, despite an increase in the total number of radio stations, the number of radio owners has significantly declined. Similarly, the studies find substantial increases in the number of television duopolies and cross-owned radio and television stations.

The studies make a number of findings related to specific rules under consideration in this proceeding. These findings, however, do not support relaxation of any of these rules, and in some cases, indicate that the Commission should revise and tighten media ownership limits.

Newspaper-Television Cross-Ownership: None of the studies support relaxation of the newspaper-broadcast cross-ownership rule. Despite the fact that the primary purpose of this rule is to promote viewpoint diversity, the studies fail to examine the impact of cross-ownership on the public's access to diverse viewpoints on broadcast stations. The studies inexplicably focus on the quantity of news provided rather than whether relaxation of the cross-ownership rule promotes diversity.

Even assuming for purposes of argument that quantity of news is a relevant consideration, the findings regarding quantity are at best modest, and often overstated and/or unsupported. Study 3's finding that television stations cross-owned with newspapers provide 2.9% local news programming is much less than the 6% increase in local news found by the FCC staff study in 1975 when the FCC adopted the cross-ownership limit. Although Study 4.1 also finds that television stations cross-owned by newspapers provide more news, it fails to distinguish between local and national news and overstates the amount of news by counting commercials and duplicative newscasts. Study 6's findings are questionable because it uses unrepresentative data, overstates (or fails to explain) findings that might be taken to support newspaper-television cross-ownership, and downplays findings that show the much more significant negative impact of radio cross-ownership on television station local news.

Local Television: The studies do not support the current eight-voices rule or any further relaxation of the rule. Although the current rule has allowed the creation of more than 100 duopolies, the studies fail to analyze the effects of duopolies on competition. Study 8, however, finds that creation of duopolies reduces diversity by allowing large group owners to increase their holdings and forcing minorities and women out of the market. While Study 4.1 highlights a finding that duopolies result in additional minutes of news, it ignores data showing that increasing the number of separately-owned stations results in even more minutes of news. In addition, the presence of an additional unrelated television station in a market increases public affairs programming, while the presence of duopolies decreases such programming.

Radio-Television Cross-Ownership: The studies find that the number of cross-owned radio and television stations has increased substantially since the rule was relaxed in 1999. The studies also show that cross-ownership has led to less competition and less diversity. Additionally, the studies find that these pervasive cross-ownerships devote significantly less time to news programming. Thus, the studies support strengthening the radio-television cross-ownership limits.

Local Radio: The studies demonstrate that the intense consolidation that has occurred in the radio industry since the rule was relaxed in 1996 has significantly reduced the number of independently-owned outlets, which the Commission has found to be the best proxy for measuring viewpoint diversity. The studies further find that format diversity, which is not a good proxy for diversity, is not affected much one way or the other by consolidation. Diversity contributed by minorities and women has been reduced by radio station consolidation.

The studies also document a lack of competition in local radio markets. Using actual market share data, Study 10 finds that the average concentration ratio for the top four radio firms is 84% for the fifty largest markets, and 97% in the smaller markets. Both are well above the level that is considered to be highly concentrated under antitrust law.

Finally, Study 5's findings regarding radio programming are incomplete, contradictory, based on questionable data, or irrelevant. For example, instead of focusing on local news, the study broadly defines news to include nationally syndicated talk shows such as "Rush Limbaugh." None of the findings offer compelling public interest justifications for further relaxation of the radio ownership limits.

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COMMENTS ON RESEARCH STUDIES ON MEDIA OWNERSHIP BY
OFFICE OF COMMUNICATION OF UNITED CHURCH OF CHRIST, INC.
NATIONAL ORGANIZATION FOR WOMEN
MEDIA ALLIANCE
COMMON CAUSE
BENTON FOUNDATION

The Office of Communication of the United Church of Christ, Inc. ("UCC"), the National Organization for Women ("NOW"), Media Alliance, Common Cause, and the Benton Foundation, by their attorneys, the Institute for Public Representation ("IPR"), respectfully submit these comments in response to the Public Notice, DA 07-3470, issued July 31, 2007, seeking comments on ten research studies on media ownership released the same day.[1]

Part I of these comments shows how the studies collectively fail to address many of the important questions in this proceeding. Part II examines what the studies say about diversity and concludes that by any measure, whether counting the number of independent owners or looking at ownership by minorities and women, diversity has decreased under the existing ownership rules. Parts III through VI analyze how the studies may be relevant to the specific rules, *i.e.*, the newspaper-broadcast television rule, the local television rule, the radio-television cross-ownership rule, and the local radio rule.[2]

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[1] For ease of reference, the studies this comment examines and their short citations are as follows: Nielsen Media Research, *How People Get News and Information* [hereinafter *Study 1*]; Kiran Duwadi, Scott Roberts, Andrew Wise, and C. Anthony Bush, *Ownership Structure and Robustness of Media* [hereinafter *Study 2*]; Gregory S. Crawford, *Television Station Ownership Structure and the Quantity and Quality of TV Programming* [hereinafter *Study 3*]; Daniel Shiman, *News Operations: The Impact of Ownership Structure on Television Stations' News and Public Affairs Programming* [hereinafter *Study 4.1*]; Kenneth Lynch, *News Operations: Ownership Structure, Market Characteristics and the Quantity of News and Public Affairs Programming: An Empirical Analysis of Radio Airplay*, [hereinafter *Study 4.2*]; Craig Stroup, *News Operations:* Factors that Affect a Radio Station's Propensity to Adopt a News Format [hereinafter *Study 4.3*]; Tasneem Chipty, *Station Ownership and Programming in Radio* [hereinafter *Study 5*]; Jeffrey Milyo, *The Effects of Cross-Ownership on the Local Content and Political Slant of Local Television News* [hereinafter *Study 6*]; Arie Beresteanu and Paul B. Ellickson, Minority and Female Ownership in Media Enterprises [hereinafter *Study 7*]; Allen S. Hammond, IV, *The Impact of the FCC's TV Duopoly Rule Relaxation on Minority and Women Owned Broadcast Stations 1999-2006* [hereinafter *Study 8*]; George Williams, *Review of the Radio Industry, 2007* [hereinafter *Study 10*].

[2] Commenters note that their ability to fully comment on the studies has been hampered by the FCC's failure to release all of the documents related to the localism and ownership proceedings that were requested in a FOIA letter filed by counsel on August 10, 2006, and to act on an administrative appeal filed February 5, 2007.

I. The Studies Fail to Address Many Important Issues

Despite the large number of pages and the overwhelming amount of data, the studies fail to address many of the important questions in this proceeding. This proceeding has two main purposes. First, it is intended to address the issues remanded by the Third Circuit in *Prometheus Radio Project v. FCC*.[3] Second, it is intended to conduct the quadrennial review required by Section 202(h) to determine whether the broadcast ownership rules continue to serve the public interest.[4]

The *Prometheus* court remanded three rules, the cross-media limits, the local television rule, and the local radio rule. It found:

> The Commission's derivation of new Cross-Media Limits, and its modification of the numerical limits on both television and radio station ownership in local markets, all have the same essential flaw: an unjustified assumption that media outlets of the same type make an equal contribution to diversity and competition in local markets. We thus remand for the Commission to justify or modify its approach to setting numerical limits.[5]

The court also directed the Commission to "reconsider or better explain its decision to repeal the FSSR [Failing Station Solicitation Rule]," and to "also consider MMTC's proposals for enhancing ownership opportunities for women and minorities, which the Commission had deferred for future consideration."[6]

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[3] *Prometheus Radio Project v. FCC*, 373 F3d 372 (2004), *cert. denied*, 545 U.S. 1123 (June 13, 2005) (Dkt. Nos. 04-1020, 04-1033, 04-1036, 04-1045, 04-1168, and 04-1177) [hereinafter *Prometheus*].

[4] *See 2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Further Notice of Proposed Rulemaking, 21 FCC Rcd 8834, 8835 (2006) [hereinafter *Remand FNPRM*].

[5] *Prometheus*, 373 F3d at 435.

[6] *Id.* at 435 & n.82.

None of the ten studies justify the numerical limits that the court found to be arbitrary and capricious. Nor do they provide much in the way of guidance as to how the rules might be modified. For example, the court upheld the FCC's conclusion that cross-ownership limits were necessary in specific situations to ensure that diverse viewpoints were available to the public,[7] but found that the Cross Media Limit adopted by the FCC was based on "irrational assumptions and inconsistencies."[8] On remand, the Commission decided not to try to justify its previous approach.[9] This decision leaves only two alternatives: justify retaining the blanket prohibition or modify the rule in a different way that is not arbitrary and is supported by the record. Several of the studies examine cross-ownership and draw conclusions about how cross-owned stations operate compared to non-cross-owned stations.[10] None, however, adequately address whether the current cross-ownership rule serves its intended purpose of promoting diversity and competition, nor do they propose alternative means of determining when cross-ownership could be permitted consistent with the public interest. Similarly, with regard to local television and radio limits, none of the studies provide any basis for determining what level of common ownership within a market serves the public interest.

With regard to the court's direction that the FCC consider how to promote ownership opportunities for minorities and women, the studies again fall short. The studies that address minority and female ownership find that minorities and women are significantly underrepresented in station ownership[11] and the FCC's current data collection practices are

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[7] *Id.* at 402.
[8] *Id.*
[9] *See Remand FNPRM* at 8848.
[10] *E.g. Study* 6.
[11] *E.g. Studies 2, 7* and *8*.

inadequate.[12] But while the studies confirm the existence of a problem, they largely fail to address possible solutions. None analyze the feasibility and efficacy of MMTC's proposals. Nor do they offer any alternative way to increase opportunities for minorities and women. Study 7 even goes in the opposite direction (and displays a stunning lack of knowledge about the history of FCC and Congressional efforts) by suggesting that the FCC "rethink" whether there are any benefits from increasing minority and female ownership.[13] None of the studies address whether the failed station solicitation rule has had any impact on minority or female ownership despite the court's specific mandate that the FCC reconsider it.

The studies similarly fall short in assisting the Commission in analyzing whether the rules continue to serve the public interest in light of competition as required by Section 202(h). All of the ownership rules are intended to promote diversity and competition. As the Commission explained in adopting the newspaper-broadcast cross-ownership rule,

> The multiple ownership rules rest on two foundations: the twin goals of diversity of viewpoints and economic competition. . . . Early in its history, the Commission acted to adopt rules to end common ownership of stations in the same service serving substantially the same area. Needless to say, such commonly owned stations could neither be true competitors nor could they offer true diversity. Since then the multiple ownership rules have been extended in a number of respects to better serve one or both of the above goals. As to competition in particular, the national public policy (expressed in anti-trust laws and elsewhere) in favor of competition and against actions which would curtail it, finds a reflection in the actions of the Commission. Sometimes, this policy will yield, however, to the even higher goals of diversity and the delivery of quality broadcasting service to the American people. This is a vitally important matter, for it is essential to a

[12] *E.g. Studies 2* (App. A), *7* and *8.*

[13] *Study 7* at 12 -13.

> democracy that its electorate be informed and have access to divergent viewpoints on controversial issues.[14]

The Commission then elaborated on why diversity, rather than competition, was its "primary concern."

> The premise is that a democratic society cannot function without the clash of divergent views. It is clear to us that the idea of diversity of viewpoints from antagonistic sources is at the heart of the Commission's licensing responsibility. If our democratic society is to function, nothing can be more important than insuring that there is a free flow of information from as many divergent sources as possible. This is not a reflection on the efforts of combination owners in diligently serving the public interest. Rather, it is a recognition that it is unrealistic to expect true diversity from a commonly owned station-newspaper combination. The divergency of their view points cannot be expected to be the same as if they were antagonistically run.[15]

In the *2002 Biennial Review Order*, the Commission identified "diversity, competition, and localism as longstanding goals that would continue to be core agency objectives."[16] It identified five different types of diversity (viewpoint, outlet, program, source and minority and female ownership) as pertinent to media ownership policy. It explained:

> Viewpoint diversity is a paramount objective of this Commission because the free flow of ideas under-girds and sustains our system of government. Although all content in visual and aural media have the potential to express viewpoints, we find that viewpoint diversity is most easily measured through news and public affairs programming. Not only is news programming more easily measured than other types of content containing viewpoints, but it

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[14] *Amendment of Sections 73.34, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard FM, and Television Broadcast Stations*, Second Report and Order, 50 FCC 2d 1046, 1074 (1975) [hereinafter *1975 Order*].
[15] *Id.* at 1079-80.
[16] *2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to 202 of the Telecommunications Act of 1996*, Report and Order, 18 FCC Rcd. 13620, 13627 (2003) [hereinafter *2002 Biennial Review Order*].

> relates most directly to the Commission's core policy objective of facilitating robust democratic discourse in the media.[17]

The Commission also reaffirmed its "longstanding determination that the policy of limiting common ownership of multiple media outlets is the most reliable means of promoting viewpoint diversity."[18] Similarly, the Commission found that "[e]ncouraging minority and female ownership historically has been an important Commission objective, and we reaffirm that goal here."[19]

But only a few of the studies even attempt to directly address whether the current levels of media concentration provide the public with a true diversity of viewpoints. For example, Study 1 asks members of the public what types of media they use to get news, current affairs and local happenings and how much time they spend with each, but it does not ask them other important questions such as whether they think they have the opportunity to hear diverse viewpoints, whether all important issues in their community are covered, and whether they get the quantity and quality of information they need and want as citizens. Likewise, no local civic, charitable or political organizations were surveyed to learn whether they believe local issues receive adequate coverage and whether they have sufficient opportunities to get their messages out to the public.

None of the studies address whether the media provide "robust democratic discourse" or whether citizens are receiving the information necessary for an informed electorate. The failure to investigate this question is particularly surprising in light of the fact that the FCC's former chief economist recommended that the Commission examine the relationship between cross-

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[17] *Id.* at 13631.
[18] *Id.* at 13629.
[19] *Id.* at 13634.

ownership and voter participation rates.[20] She explains that "[b]ecause viewpoint diversity is important as an input to good citizenship, and because voting is one indicator of citizens' meeting their responsibilities, the voter participation rate in local elections could also be used as an 'output' relevant to the Commission's diversity goal."[21] While several of the studies track the former chief economist's other recommendations, none of the studies examine voter participation.

With the exception of Study 1, Nielsen's survey of viewers, and Study 8, all were done by economists. Although economic analysis is important, it is by no means the only discipline that has some bearing on the issues before the Commission. The Commission could have engaged journalists, political scientists and communications scholars to offer their perspectives on whether the ownership rules are necessary in the public interest. Indeed, it has been asserted that in the 2002 Biennial Review, "a consequence of relying almost entirely on [the twelve studies released September 23, 2002] that defined the issue in predominantly economic terms was a disregard for many issues that should have been included in any reconsideration of the necessity of broadcast ownership rules."[22] Unfortunately, the Commission has continued to disregard many important issues in this stage of the proceeding as well.

Another important limitation is that none of the studies address the impact of digital technology.[23] Both television and radio are undergoing a transition to digital that will allow them to distribute multiple streams of programming. The ability to multicast has important

[20] Leslie M. Marx, *Summary of Ideas on Newspaper-Broadcast Cross-Ownership* (June 15, 2006) at 21-22.
[21] *Id.* at 21.
[22] Jeffrey Layne Blevins and Duncan H. Brown, *Political Issue or Policy Matter? The U.S. Federal Communications Commission's Third Biennial Review of Broadcast Ownership Rules,* 30 J. COMM. INQUIRY 21, 22 (January 2006).
[23] Shiman notes this as a limitation to his findings. *Study 4.1* at 25.

ramifications for assessing diversity, competition and efficient use of the spectrum. With the DTV transition scheduled to be completed in little over a year, it is essential that the FCC take this development into account in its review of the ownership rules.[24]

II. The Studies Find that Diversity Has Decreased Under the Current Rules

The studies that do attempt to measure diversity, e.g., the number of independent owners, generally find a decline in diversity. For example, Study 10 finds that since the radio limits were revised, the average number of owners in radio markets declined by four.[25] This decline is even more striking in light of the fact that over the same time period, the number of commercial radio stations increased by 6.8%.[26] Study 2 found that the number of commercial television stations increased by 1.4% while the number of commercial owners decreased by 4% from 2002 to 2005.[27]

Several studies find substantial increases in the number of cross-owned radio and television stations in the same markets. For instance, Study 2 finds that "the number of co-owned television and radio stations increased by more than 20% from 2002 to 2005.[28] As the number of cross-owned stations increases, the number of independent owners decreases. In addition to reducing the number of independent owners, increasing radio-television cross-ownership is associated with less news programming. For example, Study 4.2 finds that radio stations that are cross-owned with nearby television stations are less likely to air news

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[24] *Comments of the United Church of Christ, National Organization for Women, Media Alliance, Common Cause, and Benton Foundation*, at section I (filed in MB Dkt. 06-121) (Oct. 23, 2006) [hereinafter *2006 UCC Comments*].
[25] *Study 10* at 8.
[26] *Id.* at 1.
[27] *Study 2* at 5.
[28] *Study 2* at 2, 5.

programming.[29] Similarly, Study 5 finds that radio stations that are cross-owned with television stations air less news, in shorter blocks in the evening.[30] Study 6 also finds that radio-television cross-owned stations air less news, and less local news.[31]

The studies also find a decline in the number of stations owned by minorities and women. Study 2 finds that the number of minority-owned television stations dropped from 20 to 17 from 2002 to 2005, while the number of television stations owned by women remained constant at 26, even though the number of stations increased.[32] Over the same period, minority-owned radio stations increased by less than 1%, while the number of radio stations owned by women fell 6.9%.[33] Study 8 finds a decrease in the number of television stations owned by minorities and women and that the rate of decline is higher in markets with television duopolies.[34] This study also reports that most of the television duopolies are owned by the top 25 broadcast station groups.[35]

III. The Studies Do Not Support Relaxation of the Newspaper-Broadcast Cross-Ownership Rule

As noted above, the primary purpose of the newspaper-broadcast cross-ownership rule was to promote viewpoint diversity. However, the studies fail to examine the impact of cross-ownership on diversity, and the findings they do make regarding the quantity of news on cross-owned stations are of questionable relevance and validity.

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[29] *Study 4.2* at 1, 18.
[30] *Study 5* at 32, Table 17(a).
[31] *Study 6* at 17, Table 3. *See also* Table 5 (finding radio-television cross-owned television stations air less local news than independent stations).
[32] *Study 2* at 2.
[33] *Id.* at 3.
[34] *Study 8* at 46-47.
[35] *Id.* at 45.

A. None of the Studies Examine the Impact of Cross-Ownership on the Rule's Purpose to Promote a Diversity of Views

None of the studies that examine the effect of newspaper/broadcast cross-ownership—3, 4.1 and 6—analyze the impact of cross-ownership on diversity. They do not examine the content of news broadcasts to see if they cover different stories or present differing perspectives. Instead, they primarily examine the relationship between cross-ownership and the quantity of news produced. For example, Study 3 finds that television stations with cross-owned newspapers in the same DMA offer 3% more local news programming.[36] Study 4 finds that television stations cross-owned with a newspaper provided 11% more news programming per day.[37] Study 6, which analyzes three evening broadcasts during the week before the 2006 elections, finds that cross-ownership is associated with an increase in local news of 7-10%.[38]

Even assuming for purposes of argument that these findings are accurate,[39] they do not mean that relaxing the newspaper-broadcast cross-ownership rule would serve the public interest. The purpose of the cross-ownership rule is not to increase the amount of news, but to promote diversity by increasing the number of owners who ultimately decide what news stories are covered (or not), what issues are discussed (or not), who appears on the air, how much time is devoted to what subjects, and what mix of programming is presented.

When the Commission adopted the cross-ownership rule in 1975, it had before it a study done by its staff finding that on average, newspaper cross-owned television stations produced 6% more local news, 9% more local non-entertainment programming, and 12% more total local

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[36] *Study 3* at 23.
[37] *Study 4.1* at 21-22.
[38] *Study 6* at 20. Study 6 is the only study to examine content of broadcasts to any degree, but it is unreliable because it arbitrarily chooses which statistically insignificant results to label findings. *See infra* part III.B.3.(b & c).
[39] In fact, the studies are not reliable for a variety of reasons. See *infra* part III.B.

content including entertainment programming, than do other television stations.[40] The Commission recognized that the staff study showed "an undramatic but nonetheless statistically significant superiority in newspaper owned television stations in a number of program particulars."[41] The Commission regarded such findings as relevant to its decision whether to require the divestiture of existing newspaper-broadcast combinations.[42] However, it did not find them relevant to the question of whether a newspaper applicant should receive a new license. In that case, the Commission concluded that "any new licensing should be expected to add to local diversity."[43] Although a newspaper licensee might offer more news, it was "unrealistic to expect true diversity from a commonly owned station-newspaper combination" because the "divergency of their view points cannot be expected to be the same as if they were antagonistically run."[44]

B. The Studies' Findings Regarding News and Cross-Ownership are Questionable

Even if quantity of news were a relevant consideration in this proceeding, the findings regarding quantity of news are either modest or unsupported.

1. Study 3's Conclusions are Unsupported

The conclusion of Study 3 states that "[o]ur strongest findings are for Local News: television stations owned by a parent that also owns a newspaper in the area offer more local news programming."[45] But the actual study and data presented do not support this conclusion.

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[40] *1975 Order*, 50 FCC 2d at 1095, app. C.
[41] *Id.* at 1078, n.26.
[42] *Id.* at 1078.
[43] *Id.* at 1075.
[44] *Id.* at 1079-80.
[45] *Study 3* at 26.

First, the study gives the following caveat on its statistical model: "it does *not* guarantee any kind of causal relationship between the explanatory variable and the dependent variable, *i.e.* a statistically significant (positive) relationship between local ownership and local news minutes does not mean local ownership is the *cause* of higher local news minutes."[46] Similarly, a statistically significant relationship between newspaper ownership and local news minutes does not mean that newspaper ownership is the cause of higher local news minutes. One should be particularly wary of inferring causation here where the number of cross-owned stations is very limited. And even if it could be shown that existing levels of cross-ownership cause beneficial effects, allowing cross-ownership in many more markets would not necessarily have the same effect.

While Table 17 reports that television stations with a cross-owned newspaper offer 2.9 percentage points more local news programming, a statistically significant result,[47] this increase is quite modest. Indeed, it is much lower than the 6% difference found by the 1975 staff study, which the FCC found "undramatic." Perhaps even more troubling, when Crawford uses a different model (channel fixed effects) in Table 26, not only does he find *no* statistically significant relationship between newspaper ownership and local news, but he fails to mention this finding in the text of the study.[48] In contrast, with regard to the relationship between corporate parent revenues and local news, he notes that "[b]y some methods, television stations owned by corporate parents with larger annual revenue also offer more Local News, but by other

[46] *Id.* at 22, Table 17.
[47] *Id.* at 23 (emphasis added).
[48] *Id.* at Table 26 (emphasis added).

methods they offer less. *This is an important area for further inquiry*."[49] Surely further inquiry is also needed to determine the impact of cross-ownership on the amount of local news.

Study 3 also considers whether variations in other programming types are associated with newspaper cross-ownership. Remarkably, Crawford finds that newspaper-television cross-ownership has no statistically significant effect on the quantity of public affairs programming by either model.[50] Similarly, he finds that newspaper-television cross-ownership has no statistically significant impact on violent programming[51] and religious programming[52] under either model. In several other cases, he gets different results using different models. For example, he finds that newspaper-television cross-ownership has no statistically significant impact on the quantity of Spanish-language programming by one model, but has a statistically significant positive impact by another model.[53] Similarly, with regard to children's programming and family programming, he finds that newspaper-television cross-ownership has no statistically significant impact on the quantity of such programming by one model,[54] but has a statistically significant negative impact by another.[55] As discussed above, where different models yield different results, further investigation is required before any conclusions can be drawn.

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[49] *Id.* at 26.
[50] *Compare Study 3* at Tables 18 & 26.
[51] *Compare id.* at Tables 22 & 26.
[52] *Compare id.* at Tables 23 & 26.
[53] *Compare id.* at Tables 19 & 26.
[54] *Compare id.* at Tables 20 & 21.
[55] *Id.* at Table 26.

2. Study 4.1 Makes no Findings Regarding Local News, and its Other "Findings" are Questionable

Study 4.1 by Shiman finds that newspaper-television cross-ownership has *no statistically significant impact* on public affairs programming under any model.[56] On the other hand, it finds that newspaper-television cross-ownership is associated with an increase in news production of 18 minutes per day by one model, and 15 minutes per day by another.[57] At first blush, 18 (or 15) minutes may appear to be a substantial increase. However, the study overstates the amount of news by including "non-program material such as advertisements and PSAs that are typically included in programs on commercial (and many non-commercial) stations."[58]

Although the study does not explicitly address this point, it also appears to include sports and weather in the minutes it calls news.[59] It also fails to eliminate double-counting where the same news programs may be repeated on the same or different channels. Thus, although the study should be revised to correct these defects, at the very least, it is clear that the claim that cross-owned stations provide 15-18 more minutes of news per day is overstated.

Perhaps even more significantly, Study 4.1 makes no distinction between local news and national or international news. Shiman acknowledges this limitation, noting that the per-station cost of non-local news production is much lower and that local news is "more expensive for stations to obtain …, has much fewer alternative sources, and thus is likely to be more valued by

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[56] *Study 4.1* at Tables 8 & 9.

[57] *See id.* at Tables 6 & 7. The number of minutes per day is computed by dividing the coefficient values in the table by 14 since the data contain the number of minutes of programming in a 14-day period.

[58] *Id.* at 14.

[59] The quantity and quality of non-entertainment programming is only relevant to the public interest analysis to the extent it addresses the concerns of the community of license. *See infra* note 177, and accompanying text.

consumers."[60] Moreover, as discussed above, the purpose of the cross-ownership rule is to increase diversity at the local level, and the Commission has determined that "the diversity of viewpoints by national media on national issues is greater than that regarding local issues … due to the vast array of national news sources available on the Internet, cable television and DBS."[61] Thus, because Study 4.1 tells us nothing about the relationship between newspaper cross-ownership and "local news," it is of little relevance to this proceeding.

3. The Findings in Study 6 Are Questionable and Presented in a Biased Manner

Study 6 differs from the other two studies. First, it looks at a much more limited set of data. At the same time, it examines at least some aspects of the content of news programming. Unfortunately, however, it does not examine the extent to which independently owned media outlets provide more diversity than commonly owned media outlets.

Study 6 analyzes certain newscasts in all 27 markets which have television stations cross-owned with newspapers. In these 27 markets, there are 29 television stations commonly-owned with daily newspapers since the largest market, New York, has three television stations that are cross-owned. (Fox has two television stations as well as the *New York Post*; Tribune has one as well as *Newsday*). These markets are identified in Table 1.[62] The study also looks at television stations that are cross-owned by radio stations and at television stations that have both cross-owned radio stations and newspapers. However, Table 1 does not identify which television stations are cross-owned with both newspaper and radio stations, nor does it identify any of the radio-television cross-ownerships.

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[60] *Study 4.1* at 25-26.
[61] *2002 Biennial Review Order*, 18 FCC Rcd at 13631.
[62] *Study 6* at Table 1.

For each of the 27 markets, researchers taped the late evening news broadcasts of the cross-owned stations and network affiliated stations (English-language only) in the same market. The programs were recorded on three days--the Wednesday, Friday and Monday immediately prior to the November 2006 election.[63] The programs were coded and the results tabulated and analyzed using various models.

The study purports to find that "local television newscasts for cross-owned stations contain on average about 1-2 minutes more news coverage overall, or 4-8% more than the average for non-cross-owned stations."[64] It also claims that cross-ownership is associated with increased local news coverage, political news coverage, more candidate coverage, and more candidate speaking time.

a. The Programming Examined for this Study Is Not Representative

While there are many reasons to question the specific results of this study, we note that all results are affected by defects in the study design. Specifically, there are two separate representational problems with the sample of programming selected.

First, because Study 6 restricts its sampling to days immediately before an election, we have no assurance that Study 6's findings represent the typical practices of the television stations. Indeed, Milyo concedes, "the behavior of local news stations may not be the same during the week just prior to the general elections compared to other times of the year…. Consequently, the findings of this study may not be representative of differences in local news coverage by cross-ownership throughout the rest of the year."[65]

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[63] *Id.* at 8.
[64] *Id.* at 1.
[65] *Id.* at 9.

In fact, one would expect television stations to behave differently right before elections. The Communications Act imposes certain requirements, such as equal opportunities and reasonable access for federal candidates, only during periods prior to elections.[66] Moreover, studies show that many television stations in fact program differently in periods just before elections. For example, Hale's study of local news prior to the 2005 New Jersey Election found that WNYW, one of the Fox cross-owned stations, dramatically increased its local election coverage in the final week before the election. Specifically, he found that WNYW allocated 71% of its new stories in the last week to local election coverage, but only 29% in the next to last week, and none in the period between October 9 and October 24.[67] Thus, Study 6's findings cannot be reasonably and reliably extrapolated to other time periods.

While Milyo recognizes that "the findings of this study may not be representative of differences in local news coverage by cross-ownership throughout the rest of the year," he argues that "the study does investigate the presence and extent of such differences during a particularly important period, when local and unbiased news content should be especially valuable and salient for the viewing audience."[68] However, even as a study about television election news coverage, Study 6's findings are still not reliable because the sample size is too small.

Milyo concedes that his approach "departs from the more common practice in content analysis, which is to examine a 'constructed week.'"[69] Moreover, comparisons with other television election coverage studies reveal that his sample is exceptionally limited. Study 6

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[66] *See* 47 USC §§ 312(a)(7) & 315(a).
[67] Matthew Hale, *Television Coverage of the 2005 New Jersey Election*, at 15 (June 2006) [hereinafter *New Jersey Study*].
[68] *Study 6* at 9 (emphasis added).
[69] *Id*.

examines only 312 late night newscasts from 104 different stations on three different days.[70] In contrast, the Lear Center's analysis of local television news coverage of the 2002 General Election examined 10,066 newscasts. It taped both early evening and late night news programs for 48 days before the election.[71] Hale's study of coverage of the 2005 New Jersey elections coded 664 early evening and late evening local news programs shown during the final 30 days of the campaign.[72]

In sum, Study 6's exceptionally limited sample selection combined with the fact that pre-election news programming differs from news programming during the rest of the year, render all of the Study 6's findings extremely unreliable.

b. The "Findings" of Study 6 Regarding the Effects of Newpaper-Television Cross-Ownership Are Overstated

Apart from the problems with the unrepresentative and small sample of data, the findings of Study 6 are written up in such a highly misleading manner that one must question the motives of the author (or the FCC in commissioning the study). Throughout the study, positive findings regarding newspaper-television cross-ownership are consistently highlighted, even when the data does not support them. At the same time, negative findings—particularly with respect to radio-television cross-ownership—are downplayed or omitted.

For example, the abstract, which typically highlights what the author believes to be the most important findings, states:

> This analysis reveals that local television newscasts for cross-owned stations contain on average about 1-2 minutes more news

[70] *Id.* at 10.
[71] Martin Kaplan et. al., *Local TV News Coverage of the 2002 General Election*, at 7-8 (July 2003).
[72] *New Jersey Study* at 8-9.

> coverage overall, or 4%-8% more than the average for non-cross-owned stations. Newspaper cross-ownership is also significantly and positively associated with both local news coverage and local political news coverage. Cross-owned stations show 7%-10% more local news than do non-cross-owned stations (regardless of whether sports and weather segments are included in this comparison); further, on average, cross-owned stations broadcast about 25% more coverage of state and local politics. Newspaper cross-ownership is also associated with more candidate coverage, more candidate speaking time and more coverage of opinion polls, although these effects are not precisely estimated.[73]

If one compares these claims to what the study actually finds, however, it is apparent that Milyo has exaggerated his findings.

Overall news coverage. Table 3 reports the results for overall news coverage using 5 different models referred to by column number. Under the first model, TV stations cross-owned by newspapers provide 35.1 additional *seconds* of news overall, a result that the author admits is not statistically significant.[74] In fact, none of the models except column 5 show a statistically significant result for cross-owned newspapers. Column 5 shows that newspaper cross-ownership is associated with an increase of 65.7 seconds, or slightly more than one minute of news coverage.[75] Nonetheless, Milyo concludes that newspaper cross-ownership is associated with about a two-minute average increase in total news coverage, or about 8% more total news than for non-cross-owned stations."[76]

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[73] *Study 6*, Abstract.
[74] *Id.* at 35.
[75] *Id.* Although Milyo states that column 5 is one of his two preferred models, we question its validity. Column 5 "includes an indicator for whether the local newscast is regularly scheduled in a 60-minute time slot versus 30-minutes." *Id.* at 17. Since the choice of how much time to devote to a newscast is one of the important choices made by a station owner, it makes no sense to factor out the impact of whether a program is 30 or 60 minutes.
[76] *Id.* at 19.

It is not at all clear how he reaches this conclusion. In a section of the study that appeared for the first time in the revised version posted on the FCC website on September 17, 2007, a confusing discussion of "differential effects," "total effects," "average effects," and "pooled effects" is followed by the conclusion: "it is important not to get lost in the nomenclature here; the upshot of all this is that newspaper cross-ownership is associated with about a two-minute average increase in total news coverage, or about 8% more total news than for non-cross-owned stations."[77]

Because this section was added later and not subject to peer review, it cannot be relied upon by the Commission. In any event, it looks like Milyo may have come up with the two-minute figure by adding together statistically insignificant results for television-newspaper combinations (first line of Table 3) with television-newspaper-radio combinations (third line of Table 3). However, adding two statistically insignificant results does not yield a statistically significant result.

What is even more striking about Table 3 is that it finds that having a cross-owned radio station is associated with a large and statistically significant reduction of news coverage in three of the four models reported. Specifically, radio-station cross-ownership accounts for a reduction of 453.3 seconds under column 2,361.8 seconds under column 3, and 172.1 seconds under column 4. Indeed, Milyo briefly acknowledges that "radio cross-ownership is associated with *significantly less news coverage*, about six or seven minutes less."[78] However, this finding is not mentioned at all in the Abstract. Given that current FCC rules limit radio-television cross ownership as well as newspaper broadcast cross-ownership, and the fact that Study 6's finding

[77] *Id*. at 18-19.
[78] *Id.* at 17-18 (emphasis added).

regarding radio-television cross ownership is of a much greater magnitude than the results for newspaper cross-ownership, one would have expected the author to highlight this findin.[79]

Local news. The results for local news are reported in Table 4 (including sports and weather and Table 5 (excluding sports and weather). Milyo states that "the results presented in Table 4 for the preferred regression models (columns 4 and 5) show that cross-ownership is consistently associated with increased local content for stations regardless of radio cross-ownership."[80] In fact, Table 4 shows a statistically significant result for cross-owned newspapers only under column 5; all the other results are not statistically significant.[81] Table 5 shows that when sports and weather are excluded, there is *no statistically significant increase* in local news associated with cross-owned newspapers *under any model.*[82]

Nonetheless, Milyo claims that "in both models, the two newspaper cross-ownership variables … are jointly significant."[83] He concludes that "newspaper cross-ownership is associated with around 1.5 to 2 minutes more local news coverage (including sports and weather) or about 7-10% more than average for non-cross-owned stations."[84] He also claims that newspaper cross-ownership is associated with one additional minute of local news coverage, excluding sports and weather.[85]

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[79] Also, given that the FCC's rule also prohibits radio-newspaper cross-ownerships, one would have thought that that this factor would be examined, but it was not included in this study.
[80] *Id.* at 20.
[81] *Id.* at 36, Table 4.
[82] *Id*. at 37, Table 5 (row one).
[83] *Id*. at 20.
[84] *Id.*
[85] *Id*. at 21.

As with the conclusions regarding overall news, the conclusions regarding local news are not supported by the data reported in Tables 4 and 5.[86] Milyo fails to clearly explain how he reaches his conclusions, and his attempted explanation suggests that he may be adding together statistically insignificant results in an effort to reach the result he wants. And again, Milyo fails to mention that in both Tables 4 and 5, he finds that radio station cross-ownership is associated with a statistically significant and large decrease in local news coverage under all four models reported.

Coverage of State and Local Politics. Table 6 reports on coverage of state and local politics. Although it finds that television stations with cross-owned newspapers provided slightly more coverage (up to 26 seconds more), *none of the results are statistically significant.*[87] On the other hand, under all four models, television stations with cross-owned radio stations *presented less coverage of state and local politics*. While the amount ranged from 79.6 to 126.2 seconds less, all results were statistically significant. Although stations that had both cross-owned radio and newspapers provided more coverage of state and local politics, only two of the

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[86] Table A3, Pooled Cross-ownership and Local News Coverage, does find statistically significant increases. However, this table was added in mid-September and was not subjected to peer review. Table A3 seems to "pool" television-newspaper cross-ownerships with television-radio-newspaper cross-ownerships. Milyo nowhere identifies in the paper which of the 29 newspaper television cross-ownership also involve radio. However, the underlying data indicates that 11 of the television-newspaper cross-ownerships identified in Table 1 also involve radio (Chicago, Atlanta, Columbus, Cincinnati, Milwaukee, Salt Lake City, Dayton, South Bend, Cedar Rapids and Fargo). It may be that the small size of these groups makes it difficult to find any statistically significant impacts. However, combining these groups together is problematic because as Milyo himself concedes, "the average effect of radio cross-ownership is consistently negative. It is not immediately obvious why radio cross-ownership should have such a *different impact* on local news coverage compared to newspaper cross-ownership." *Study 6* at 21 -22 (emphasis added). If radio cross-ownership has such a different effect, it cannot be reasonable to "pool" newspaper cross-ownership (without radio) with newspaper cross-ownership with radio to model the effect of newspaper cross-ownership.

[87] *Id.* at 38 (emphasis added).

results were statistically significant. Again, it is difficult to see how Milyo can conclude that "newspaper cross-ownership is associated with a 40-46 second average effect on state and local political coverage."[88]

Candidate and Partisan Issue Coverage. Tables 7-11 examine the time devoted to state and local candidates speaking for themselves, total state and local candidate coverage, partisan issue coverage and political opinion polls coverage. In discussing these results, Milyo consistently emphasizes results favorable to newspaper cross-ownership even though these results are statistically insignificant.

For example, in Table 8 he concludes that "while newspaper cross ownership is positively associated with state and local candidate speaking time and the magnitude of this effect is relatively large, the effect is simply not estimated precisely enough in this analysis to render it statistically significant."[89] Similarly, in discussing Table 9 (total coverage of state and local candidates), he notes that "*even though* these estimates are not consistently significant, the magnitude of the positive association between newspaper cross-ownership and state and local candidate coverage is *relatively large.*"[90] How can the same result be both statistically insignificant and large at the same time?

Milyo finds no statistically significant results in either Table 10 (total partisan issue coverage) or in Table 11 (coverage of opinion polls).[91] With regard to Table 11, he observes that "[e]ven so, the average effect of newspaper cross-ownership on poll coverage is about 2 seconds,

[88] *Id.* at 21.
[89] *Id.* at 23.
[90] *Id.* (emphasis added).
[91] *Id.* at Tables 10 & 11.

or about 33% of the average poll coverage for non-cross-owned stations."[92] This surely begs the question of whether the amount of time spent covering polls is an important public interest factor, and even if it is, whether 2 seconds additional coverage, even if it were statistically significant, would make any difference in the real world.

Perhaps, most troubling of all is how Milyo sums up his findings for political news. After discussing the four tables, none of which found statistically significant results, he concludes: "[c]onsequently, for three of the four political news content measures, newspaper cross-ownership on average has a *potentially substantively large positive effect* on political news coverage, but these effects are not estimated precisely."[93] The fact is, since the results are *statistically insignificant,* the opposite conclusion—that newspaper cross-ownership on average has a *potentially negative effect* on political news coverage—is just as likely.

c. Study 6 Fails to Report or Downplays Findings that Show Negative Aspects of Cross-Ownership

While improperly highlighting "positive" results for newspaper cross-ownership that have no statistical significance, Milyo completely glides over or omits the adverse results that do have statistical significance. For example, Table 5 shows that television stations with cross-owned radio stations have less local news coverage (excluding sports and weather) by both of Milyo's preferred models, and that these negative impacts are of high statistical significance ($p<.01$).[94] However, this finding is not included in the Abstract, nor is it mentioned in the Table 5 discussion. Similarly, Table 6 shows that radio-television cross-ownership leads to about 96 seconds or 80 seconds less state and local political coverage, and this impact is statistically

[92] *Id.* at 24.
[93] *Id.* (emphasis added).
[94] *Id.* at Table 5.

significant.[95] Again, neither the abstract nor the text mentions this effect. Tables 8, 9, and 10, which examine coverage of state and local candidates and partisan issues, also show that radio station cross-ownership has a statistically significant negative effect under certain models, and again these results are not discussed in the study.

d. The Findings in Study 6 with Regard to Partisan Slant Are of Questionable Validity and Relevance

The last part of Study 6 examines partisan slant and concludes that "[o]n every measure though, the cross-owned stations exhibit a slight and statistically insignificant Republican-leaning slant."[96] Unlike with news and candidate coverage, where Milyo treats statistically insignificant results as findings, here, the author concludes that "[w]ith regard to the partisan slant of news coverage, there is little consistent and significant difference between cross-owned stations and other major network-affiliated stations in the same market."[97]

In any event, it is unclear how Milyo's findings on slant are pertinent to any question in the FCC's ownership proceeding. Unlike the previous study by Pritchard,[98] which itself suffered from serious methodological flaws, Milyo does not purport to analyze whether commonly-owned newspapers and broadcast stations present similar or different "slants." Nor does he examine

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[95] *Id.* at Table 6.

[96] *Id.* at 24.

[97] *Id.* at Abstract. Milyo goes on to add "although there is some evidence that the partisan slant of local news in each market is associated with the average partisan voting preferences in the local market." *Id.* But the "evidence" is extremely unreliable as it suffers from the classic "chicken and egg" problem. Table 19 shows that there is significant positive association between Democratic voting preferences in the local electorate and Democratic slant in every measure of slant, and many of these assocations are statistically significant. It is, however, a huge jump of logic to conclude that it is the voting preferences that *cause* the slant rather than the other way around.

[98] David Pritchard, *Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign* (Sept. 2002).

whether the news coverage of cross-owned television stations is balanced or fair. Indeed, he explicitly cautions that his "estimates are *uninformative* about whether any particular station's coverage is balanced or biased."[99]

Given the apparent lack of relevance, we will not point out all of the many problems with this part of Study 6. We do note, however, despite its claim to use objective procedures to measure political slant, and its professed disdain for subjective measures that present challenges "for replication (which is a hallmark of scientific inquiry)," [100] this study also presents challenges for others to replicate the results. Indeed, the peer review points out that "there is little detail on how [partisan] issues were defined or how the author assessed whether an issue appeared repeatedly and prominently on the websites of one party but not the other."[101]

IV. The Studies Do Not Support the Existing Local Television Rule or Any Further Relaxation of It

Like the cross-ownership rule, the television duopoly or local television rule was intended to promote diversity of viewpoints and competition in local communities. In relaxing the prohibition against the common ownership of two stations with overlapping service areas in 1999, the Commission reaffirmed that the rule

> serves a vital public interest by promoting competition and diversity in the mass media. These are bedrock goals – reaffirmed by Congress and the Supreme Court on numerous occasions – in

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[99] *Study 6* at 25.

[100] *Id.* at 7.

[101] Matthew Gentzkow, *Peer Review Evaluation of FCC Media Ownership Study 6* at 2. For example, Milyo describes one metric for slant as the amount of time devoted to "polls favoring one party or another." *Study 6* at 7. It is unclear what this means. Is the fact that a poll revealed that a majority of those polled favored one candidate over another mean that it favors that party of that candidate?

> carrying out our statutory mandate of ensuring that broadcast licensees serve the "public interest, convenience, and necessity."[102]

The Commission found, however, that there had been an increase in media outlets available, such that,

> In markets with many separate licensees and a variety of other media outlets, we believe the benefits of joint ownership in certain instances outweigh the cost to diversity from permitting such combinations. There is evidence concerning the efficiencies inherent in joint ownership and operation of television stations in the same market, and of radio-television combinations. These efficiencies can lead to cost savings, which in turn can lead to programming and other service benefits that serve the public interest.[103]

Thus, the Commission relaxed the duopoly rule to allow common ownership of two non-top-four ranked stations in the same DMA, so long as eight independently owned-and-operated television stations remained in the DMA.

As we pointed out in comments filed last fall, because there were no duopolies in 1999 and only a few in 2002, the FCC had little evidence that duopolies would result in efficiencies that would in fact benefit the public.[104] Now that the 1999 rules have been in effect for eight years, the Commission has an obligation to assess whether its predicted benefits have in fact materialized.

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[102] *Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules*, Report and Order, 14 FCC Rcd 12903, 12907 (1999).
[103] *Id.* at 12922.
[104] *2006 UCC Comments* at 58.

A. Despite the Creation of More than 100 Duopolies, None of the Studies Analyze the Effects of Duopolies on Competition

Study 8 identifies 109 duopolies which were created between 1999 and 2005.[105] Surprisingly though, since two different versions of the local television rule were reversed and remanded by two different courts of appeals with instructions to devise a rule that was not arbitrary and capricious,[106] none of the other studies focus on this rule.

Study 2 tracks media ownership trends from 2002 to 2005. It finds "a slight increase in the number of [television] stations and a slight decrease in the number of owners."[107] It also finds that that co-owned television and radio stations increased by more than 20%. But strangely, it provides no specific data about the increase in the number of co-owned television stations. In addition, while Study 10 analyzes the degree of competition in local radio using concentration ratios, neither it nor any other study analyzes competition in local television using concentration ratios or any other technique.[108]

B. Study 8 Shows that the Creation of Duopolies Has Reduced Diversity

Study 8 finds that relaxing the duopoly rule leads to increases in the number of stations owned by the largest group owners and decreases in the numbers of stations owned by women and minorities.[109] Specifically, it finds that of 109 duopolies, 83 are owned by the top twenty-

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[105] *Study 8* at app. A.
[106] *Prometheus*, 373 F.3d at 382; *Sinclair Broad. Group, Inc. v. FCC*, 284 F.3d 148, 170-71 (DC Cir. 2002).
[107] *Study 2* at 2.
[108] While there is no competition analysis comparable to Study 10's analysis for radio, Study 4.1 does factor in competition as one of its variables, and finds that having more separately-owned station in a markets leads to more news and public affairs programming. *See infra* at Part IV.C.1.(a & b).
[109] *Study 8* at 49.

five largest station groups.[110] Beneficiaries of the relaxation of the duopoly rule include Belo, CBS/Viacom, Clear Channel, Emmis, Fox, Lin Television, Meredith, Pappas, NBC/Universal, Scripps-Howard, Sinclair and Univision.[111] In contrast, none of the 109 duopolies is owned by a minority or woman.

Moreover, Study 8 observes that duopolies are very profitable. For example, Fox generated nearly 60% of its television station revenue base, over $1 billion, from newly created duopolies.[112] Based on the impact of past relaxations of ownership rules, which hurt minority owners by driving up station prices and creating more formidable competitors, Study 8 theorizes that relaxing the television duopoly rule would have a similar impact.[113] It finds that while minority-owned stations dropped by 27% across all markets in which minority owned station operated between 1999 and 2005, the number of minority owned stations dropped even more -- by 39% -- in markets entered and/or occupied by television duopolies.[114] In addition, it finds that 36% of female-owned stations operating in duopoly markets were sold, and all were sold to non-female, non-minority owners.[115]

In sum, Study 8 shows that even the limited relaxation of the local television rule permitted in 1999 has led to a reduction in both outlet diversity by decreasing the number of independent owners at the local level, and in racial and gender diversity, by making it more difficult for women and minorities in markets with duopolies.

[110] *Id.* at 3.
[111] *Id.* at 54.
[112] *Id.* at 29-30.
[113] *Id.*
[114] *Id.* at 46-47.
[115] *Id.* at 54.

C. Study 4.1 Provides No Reason to Allow Additional Duopolies

Study 4.1 examines the relationship between television stations' ownership characteristics and the quantity of news and public affairs programming. To do this, Shiman collected the scheduled news and public affairs for almost all full power analog television stations for two weeks during 2002 to 2005. He finds that overall, television stations averaged 165 minutes per day of news and 23 minutes per day of public affairs. Using a "three-way group fixed effects model" and two other models, the study tries to isolate the effects of a number of different variables such as the number of unrelated stations in the DMA, the number of co-owned stations (duopolies) in the DMA, local ownership and ownership by a big-4 network. The study makes several findings of potential relevance to the local television rule, including the claim that television stations with co-owned television stations in the same market provide 24 additional minutes of news per day, or a 15% increase.[116]

While arguably this finding could provide some support for the current rule, which allows duopolies only where eight independently owned and operated television stations remain in the market and only one of the co-owned stations is ranked in the top-four in terms of ratings,[117] it provides no support for further relaxation of the rule. To the extent that duopolies are allowed in smaller markets or among top-four stations, this study provides no reason to think that similar benefits would flow from such ownership arrangements. However, as we show below, this finding is questionable to begin with and is completely undermined by another finding, which the author fails to discuss, that having an additional unrelated station in the market actually accounts for more minutes of news than having an additional co-owned station.

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[116] *Study 4.1* at 1.

[117] The study also provides support for retaining the top-four condition because larger station groups provide less news coverage per additional station owned by the parent corporation. *Id.* at 21.

1. Study 4.1 Fails to Highlight Two Important Findings that Show that the Public Interest Is Better Served by Having More Separately Owned and Operated Stations Rather than More Duopolies

One of the most troubling aspects of this study, conducted by an economist employed by the FCC, is that it fails to highlight strong findings that support retaining or tightening the local television rule while emphasizing weak findings that could be used to support arguments for relaxing the rule. For example, the author repeatedly asserts that duopolies lead to increased news programming[118] when in fact, as the peer review points out, this finding is contradicted by one of the models and is therefore not "robust."[119]

Study 4.1's "finding" that duopolies result in more news is also weak because, as pointed out above, the study fails to distinguish between total news and local news.[120] The peer review notes that the failure to distinguish between local and national news is an important limitation of the study.[121] This distinction is particularly significant here because the purpose of the local television rule is to promote a diversity of views on local issues. Shiman even acknowledges that local news "is much more expensive for stations to obtain, . . . has much fewer alternative sources, and thus is likely to be more highly valued by consumers."[122] In addition, despite the fact that opponents of increased media consolidation have long complained that commonly-owned stations fail to contribute to diversity because they air the same or similar

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[118] *See, e.g. Study 4* at 2, 21.

[119] Philip Leslie, Peer Review of *The Impact of Ownership Structure of Television Stations News and Public Affairs Programming*, at 3.

[120] *See supra* at part III.B.2.

[121] *See* Leslie, *supra* note 115.

[122] *Study 4.1* at 25.

(repurposed) newscasts, the study fails to take into account or even assess the extent of duplicative news programming.[123]

a. Study 4.1 Finds that the Presence of an Additional Unrelated Television Station in a Market Increases News Programming by 28 Minutes

Not only is the finding that duopolies are associated with increased news very weak, but the study fails to report stronger findings of equal or greater relevance to a determination of whether the local television rules serve the public interest. Table I.6 shows that the addition of an "unrelated station in the DMA count" increases the amount of news by 338.43 minutes, or about 28 minutes per day.[124] In contrast, Table I.6 shows that the addition of an "other co-owned station in the DMA count" increases the amount of news by 338.43 minutes, or about 24 minutes per day. Both of these results are reported to be statistically significant. Thus, under this model, markets with more unrelated stations (i.e. fewer or no duopolies) have more news than markets with more duopolies. This suggests that any change in the status of a television station from unrelated to co-owned would lead to a net decrease in the number of news minutes in the DMA.

Table I.7, which examines the same variables utilizing two different models, also finds that markets with more unrelated stations have more news than markets with more duopolies. Using the second model, the presence of another unrelated station results in 709.98 total additional minutes, while an additional duopoly station results in only 586.30 additional minutes

[123] Shiman notes that a limitation of the study is that it does not address quality and that "some of the news and public affairs programming included in this study might reflect programming of lower quality that yields low demand, such as rebroadcast news reports in the middle of the night, or someone reading wire service reports." *Id.* at 26.

[124] To reach the per-day figure, divide the total by 14, the total number of days worth of data included in this study. See *id.* at 22, n.32.

for the period reviewed. Under the third model (full fixed effects), an unrelated station accounts for 26.2 total additional minutes, while an additional duopoly accounts for a *decrease* of 220.37 minutes for the period reviewed.[125]

Given that the finding that the number of unrelated stations in a market is associated with increased news is consistent across all models and that, in at least two of the models, it is a very large number (338 minutes under the first model, and 710 minutes under the second), one would expect that author to highlight these findings. He does not. These findings are not mentioned at all in the Abstract and are only referenced obliquely in the text.[126]

b. Study 4.1 Finds that the Presence of Additional Unrelated Television Stations in a Market Increases the Amount of Public Affairs Programming While the Presence of Duopolies Decreases Public Affairs Programming

Shiman also fails to highlight findings that an increased number of unrelated stations is associated with increased public affairs programming. In Tables I.8 and I.9, Shiman analyzes the impact of the same variables on the minutes of public affairs programming. In the Abstract, he reports that "[m]ost ownership characteristics did not have a statistically significant impact on the quantity of public affairs programming."[127] Again, however, the Tables tell a different story.

Specifically, using the Three-Way Group Fixed Effect Model, Table I.8 finds that unrelated stations account for an 85.47 minute increase (approximately 6 minutes per day) while

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[125] Again, all of these results are reported to be statistically significant.

[126] Shiman observes in discussing Table I.4 that "[t]he coefficients on variable measuring competition suggest that providing news may be a way for station to differentiate their product, since it rises when there are more more competitors" in a market area. *Id.* at 21. Later, in discussing Table I.8 concerning public affairs programming, he notes that "the impact of competition in the DMA is consistent with our results for news programming, which a greater number of unrelated stations in the same DMA increasing the number of news minutes." *Id.* at 23.

[127] *Id.* at 1.

co-owned stations account for a 0.13 minute decrease. Both results are reported to be statistically significant. Shiman acknowledges that "a greater number of unrelated stations in the same DMA increase[s] the number of minutes of public affairs" programming of a given station by six (6) minutes.[128]

Table I.9 also finds that unrelated stations account for a statistically significant increase in public affairs programming under two additional models (90.84 second and 12.97 seconds, respectively). For co-owned stations, it finds no statistically significant increase under the second model, and a decrease of 50.53 minutes under the third model. Indeed, Shiman observes that "the amount of co-owned stations' public affairs programming within the same DMA still has a significant and negative impact."[129] Thus, this study suggests that increasing the number of unrelated television stations in a market by prohibiting duopolies should result in an increase in both news and public affairs programming.

In sum, while the studies fail to comprehensively examine the impact of relaxation of the duopoly rule, they do show that the current rule has resulted in fewer owners in local markets, particularly fewer minority and women owners. They also suggest that increasing the number of unrelated owners results in increased news and public affairs programming, while increasing the number of duopolies leads to reductions in public affairs programming.

[128] *Id.* at 23.
[129] *Id.* at 24.

D. Added Competition Tends to Reduce Bias

Although none of the FCC studies examine the content of news on local broadcast stations, a recent study by Gentzkow & Shapiro finds that the greater number of local news broadcasts in a market, the less bias in news coverage.[130] This study finds that:

> Competition in the news market can lead to lower bias. A firm competing with another news outlet runs the risk that, if it distorts its signal, the competitor's report will expose the inaccuracy and thus reduce consumers' assessments of the distorting firm's quality. We also show that if all firms in a market are jointly-owned, bias can remain unchanged even as the number of firms get large.[131]

The authors highlight the policy implications of their research to the FCC's media ownership:

> In the current debate over FCC ownership regulation in the United States, the main argument in favor of limits on consolidation has been the importance of "independent voices" in news markets. [Our research] offers one way to understand the potential costs of consolidation: independently owned outlets can provide a check on each other's coverage and thereby limit equilibrium bias, an effect that may be absent if the outlets are jointly owned.[132]

V. The Studies Support Reinstatement of the Radio-Television Cross-Ownership Ban

When the FCC relaxed the duopoly rule in 1999, it also relaxed the limitation on common ownership of radio and television stations serving the same area.[133] Although the 1999 radio-television cross-ownership rule was replaced by the Cross Media Limit in the *2002 Biennial*

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[130] Matthew Gentzkow and Jesse M. Shapiro, *Media Bias and Reputation*, 114 J. of Political Economy 280, 308 (2006).
[131] *Id.* at 282-83.
[132] *Id.* at 310.
[133] *Review of the Commission's Regulations Governing Television Broadcasting*, Report and Oder, 14 FCC Rcd 12903, 12947 (1999) [hereinafter *Local TV Order*]. From 1970 until 1989, new radio-television combinations were generally prohibited, but in 1989 the Commission adopted a relaxed waiver policy in top markets, and then in 1999 the Commission adopted a tiered rule.

Review Order,[134] the *Prometheus* court found that the Cross Media Limit was arbitrary and capricious, and stayed the rule change.[135] Thus, the current rule permits an entity to own up to two television stations, if allowed under the television duopoly rule, and up to six radio stations if permitted under the radio rule, or a seventh station instead of a permitted second television station, subject to a requirement that twenty independent "voices" remain; or up to two television stations and four radio stations so long as ten independent voices remain; or a combination of one television and one radio station was permitted regardless of the number of voices remaining.

In the *FNPRM*, the Commission asked whether the radio-television cross-ownership rule remain necessary in the public interest.[136] UCC et. al.'s comments recommended the Commission revise and tighten the ban on radio-television cross-ownership to promote the public interest in diversity, competition and localism.[137]

The studies that address radio-television cross-ownership show the negative impact of relaxing the radio-television rule, although such findings are consistently minimized. In particular, the studies find a large increase in radio-television cross ownership in the years since the Commission loosened the restriction in 1999. Study 2 finds that the number of television stations co-owned with radio stations increased from 273 to 333, an increase of 20%.[138] It also finds that the number of radio stations co-owned with television stations increased from 656 to 782, or by 19%, over the same time period.[139] The increased number of radio-television

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[134] *2002 Biennial Review Order*, 18 FCC Rcd at 12951-52.
[135] *Prometheus*, 373 F.3d at 402.
[136] *Remand FNPRM* at 8848.
[137] *2006 UCC Comments*, Dkt. No. 06-121 at 74 (Oct. 23, 2006). UCC et. al.'s initial Comments discuss why invalidation of the Cross Media Limit also means that the Commission cannot revert back to the 1999 radio-television cross-ownership rule. *Id.* at 76.
[138] *Study 2* at 2, Table 1.
[139] *Id.* at 3, Table 2.

combinations results in fewer independent owners and consequently, less outlet diversity. And just as Study 8 found that increasing television duopolies has made it more difficult for minorities and women to own stations, increasing television-radio cross-ownership likely has a similar effect. Indeed, Study 2 finds that the number of minority-owned television stations and the number of female-owned radio stations both decreased.[140]

Other studies find that less news is aired on cross-owned stations. As discussed above, Study 6 specifically finds that television stations cross-owned with radio stations air significantly less news overall and less local news in particular.[141] Study 4.2 also finds that radio-television cross-ownership makes it less likely that the television station will air news at all.[142] Study 5 finds that radio stations that are cross-owned with television stations air less news, in shorter blocks in the evening.[143] Not only is it unreasonable to expect true diversity from commonly owned stations, but with significantly less time devoted to news coverage, cross-owned stations have less opportunity to air diverse viewpoints.

In addition to harming diversity, Study 5 suggests that radio-television cross-ownership harms competition. Specifically, Study 5 finds that radio-television cross-ownership raises advertising rates markets with 30 or more radio stations.[144] Thus, the studies show that the growth of radio-television cross-ownerships has reduced both competition and diversity. Therefore, the public interest would be better served by a tightening of the rule rather than by retention or further relaxation.

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[140] *Study 2* at 2-3.
[141] *See supra* at Section II.
[142] *Study 4.2* at 1, 18.
[143] *Study 5* at 32, Table 17(a).
[144] *Study 5* at 3, 17.

VI. The Studies Support Tightening of the Local Radio Limits

Two studies, Study 5 and Study 10, are primarily concerned with radio. Study 10 finds that the current radio ownership limits lead to decreased diversity and competition. Study 5 makes a variety of findings about radio programming, but most are irrelevant to the question of whether retaining the existing limits or adopting different ones would best serve the public interest.

A. The Studies Show that Increased Consolidation in Radio Has Harmed Diversity

The studies demonstrate that radio consolidation has been harmful to outlet diversity, *i.e.*, the number of independently owned outlets, which the Commission has found to be the best proxy for viewpoint diversity. The studies further find that format diversity, which is not a good proxy for diversity, is not affected much one way or the other by consolidation. Finally, another type of diversity -- that contributed by minority and female ownership -- has been reduced by radio station consolidation.

1. Radio Consolidation Has Reduced Outlet Diversity

Study 10 notes that "[o]ne measure of diversity that is of interest to the Commission is the number of independent owners in a local Metro market."[145] It finds that the

> the decline in the number of independent owners of radio owners nationally reflects a general trend across Metro markets, and not simply consolidations in a few large or small Metro Markets. In March 2007, the average number of owners across all Metro markets was 9.4, with a range of 6.5 in the smallest Metro markets (ranks 101-299) to a high of 23.9 in the top 10 Metro markets. In March 1996, the average number of owners in a Metro market was 13.5. Thus from March 1996 to March 2007, there was a

[145] *Study 10* at 8.

cumulative decline of about four in the average number of owners per market.[146]

2. The Effect of Radio Concentration on Format Variety Is Ambiguous and of Limited Relevance

Study 10 notes that the number of distinct radio formats provides another possible measure of diversity. Here, the Study finds that "there generally continues to be no trend in either direction in the diversity of radio programming available to consumers."[147] This appears to be generally in line with the mixed findings presented in Study 5.

Study 5 by Chipty examines the effect of ownership on formats using three different measures of formats, which it calls Format 101, Format 20 and Format 11.[148] It finds that "more concentrated markets offer fewer formats and have more pile-up."[149] "Pile-up" refers to the number of stations with the same format. Study 5 gives a hypothetical to illustrate:

> Suppose there are two markets, each with 10 stations and 5 formats. The first market has 2 stations per format, and the second market has 1 station for each of 4 formats and 6 stations for the fifth format. Looking at format counts, the two markets appear to be identical. However, ... market two ... has more pile-up on a particular format.[150]

When Chipty uses a regression analysis to control for the number of stations and the interaction effects between stations and concentration, it finds that "concentration has *no*

[146] *Id.* (emphasis added).
[147] *Id.* at 8.
[148] "Format 101" is a very specific classification scheme encompassing all 101 BIA format categories; "Format 20" places those 101 BIA formats into 20 categories; and "Format 11" places those 20 formats into 11 categories. *Study 5* at 8, app. 1.
[149] *Study 5* at 27.
[150] *Id.*

statistically significant effect on the number of available formats. [But] . . . concentrated markets have *significantly less pile-up* as measured by less format concentration.[151]

It is wrong to conclude, as Chipty suggests, that less "pile-up" indicates more program diversity. Using Chipty's hypothetical, it is not obvious that a market with six stations with news formats would offer listeners less viewpoint diversity than a market with only two stations with a news format. It would depend of course on whether having the same format means that the stations present identical content, a factor which she does not examine. If the six stations with news formats were separately owned, they would likely offer substantial diversity. Moreover, given the large grouping within formats, especially using the Format 20 and Format 11 measures, stations that present very different perspectives and types of programming may be grouped together. For example, the "other music" format in Format Category 11 includes stations categorized as 28 different formats under the Format 101 Category. These range from classical, to ethnic (including Greek, Hawaiian, Japanese, Polish), to jazz, folk and big band.[152]

Using a station-pair level analysis, Study 5 finds that "commonly owned stations in the same market are more likely to have the same format than are stations owned by different owners."[153] Again, using a regression technique, the Study finds that "[c]onsolidation of ownership has no statistically significant effect on any of the format measures in big markets. In small markets, consolidation is associated with fewer formats, as measured by Format 11 and 101."[154] Thus, even if format diversity were a relevant criterion, the fact that the studies are

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[151] *Id.* (emphasis added).
[152] *Id.* at app. A. Similarly, the Religious category includes a number of different formats, such as Black Gospel and Christian Contemporary.
[153] *Id.* at 28.
[154] *Study 5* at 29.

inconclusive as to whether consolidation reduces format would not provide grounds for further relaxation.

Study 10 cautions, however, that format "may not be the best proxy for capturing the diversity of programming."[155] A prior FCC study warns that "[f]ormats are merely taxonomic methods of roughly classifying various radio stations" and "[t]herefore, the change in the number of formats may not be an accurate measure of the change in product diversity."[156] Similarly, the Future of Music Coalition has pointed out:

> format variety is not the same as program diversity . . . For news and information formats, programming diversity means the number of differing viewpoints that can be heard on the air. For music formats, programming diversity could be indicated by the number of songs available to listeners in given geographic market. Diversity in songs, arts, and viewpoints matters more than diversity in format names.[157]

In fact, longstanding Commission policy is that a station's format is irrelevant to its public interest analysis, and therefore cannot serve as grounds for petitioning to deny a license transfer. The Supreme Court affirmed this policy in *WNCN Listeners' Guild*.[158] In its *2002 Biennial Review Order*, the FCC reaffirmed this policy, noting that "program diversity is best achieved by reliance on competition among delivery systems rather than by government

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[155] *Study 10* at 8-9.
[156] George Williams et al., *Radio Market Structure and Music Diversity* (Sept. 2004) at 4.
[157] Peter Dirola, *Radio Regulation: Has it Served Citizens and Musicians?*, Future of Music Coalition, at 42 [hereinafter *FMC Study*]. FMC also points out that format measures are unable to measure playlist homogeneity. *FMC Study* at 48-50. Playlist homogeneity refers to the sameness among different radio formats. Studies reveal that playlist homogeneity has increased in recent years. *See, e.g.,* Andrew Sweeting, *Uniting and Turning the Guns on the Enemy: A Micro Study of Station Ownership, Programming and Listenership in the Music Radio Industry* (2005) at 30. Thus, format measures would be unable to measure this change. FMC also points out that format measures do not capture the decrease in viewpoint diversity that occurs when a single party programs multiple stations in the same market with the same format. *FMC Study* at 50.
[158] *See FCC v. WNCN Listeners Guild*, 450 U.S. 582, 595 (1981).

regulation."[159] Thus, even if the studies had found that increased consolidation would lead to greater format variety (which they did not), relaxing the radio ownership limits on the ground that the public interest would be served by greater format variety would require the Commission to change its longstanding policy and invite parties to challenge license transfers where format changes were involved.

3. Radio Consolidation Has Diminished Diversity Provided by Minority and Women Owners

Although format variety is not an important measure of diversity, the extent of minority and female ownership of broadcast station is.[160] Moreover, the Commission has frequently acknowledged the importance of radio as providing a means for previously excluded minorities and women to enter the broadcast industry.[161]

Unfortunately, consolidation in the radio industry has made it even more difficult for minorities and women to enter the business and be successful. Study 2 finds a decline in the percentage of radio stations owned by minorities and women. It finds that while the number of stations increased by 2.4% industry wide from 2002 to 2005, the number of minority owned stations grew by just a little more than one-half of 1%.[162] Meanwhile, female ownership dropped 6%.[163] In fact, it could be that minority and women's ownership has dropped even further. Study 10 finds that the majority of consolidation took place between the years 1996 and 2000 and continued at a slower pace from 2001 to 2006.[164] Thus, the numbers in Study 2, which

[159] *2002 Biennial Review Order,* 18 FCC Rcd at 13632.
[160] *Id*. at 13634.
[161] *Id.*
[162] *Study 2* at 8.
[163] *Study 2* at 8, 16.
[164] *Study 10* at 5.

fall into the latter period, do not account for more drastic declines that might be seen if the studies had analyzed minority and female ownership data from the earlier time period.[165]

In sum, radio consolidation under the current rules has led to reductions in two of the most important measure of diversity – outlet diversity and station ownership by minorities and women.

B. Study 10 Confirms that there Has Been a Reduction in Competition Since Ownership Caps Were Increased

Not only has consolidation resulted in decreased diversity, it has also decreased competition. Study 10 uses actual market share data to determine the concentration ratios of local markets. These findings are of particular importance because the *Prometheus* court was highly critical of the Commission's failure to use actual market share data in developing ownership limits.[166]

Under antitrust law, there is "no settled formula for determining when the concentration ratio is high enough to facilitate anticompetitive behavior." However, "an industry in which the top four firms handle 80% of the production is considered highly concentrated."[167] And, "[i]n a market which is already highly concentrated… the courts will look with great disfavor on any merger that increases concentration, even if that increase is minimal."[168]

The concentration ratios revealed in Study 10 show that local radio markets are highly concentrated. In the fifty largest markets, on average, top four firms hold 84%.[169] The top firm

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[165] UCC et al. have addressed the inadequacies of the FCC's data on minority and female ownership in other comments. *See Comments of UCC et. al.* at 11-13 (filed in MB Dkt. 06-121) (Oct. 1, 2007).
[166] *Prometheus*, 373 F.3d at 408-09.
[167] Kintner et al., *Federal Antitrust Law* § 34.8 (2006).
[168] *Id.*
[169] *Study 10* at 7.

alone accounts for 34% of market revenue, the top-two account for 58%.[170] The concentration ratios are even higher in smaller markets where on average, the top four firms hold 97% of market revenue. In those markets, the largest owner holds 54%, the top two hold 84%.[171] Moreover, in 111 of the Arbitron markets, the top two entities control at least 80% of market revenue.[172] These high levels of concentration indicate that the ownership limits should be tightened rather than relaxed.

C. Study 5 Provides No Basis for Relaxing the Radio Ownership Limits.

While Study 5 examines the effects of ownership structure on some other measures of content and on the variety of non-music programs aired, it fails to examine (or to present results) on a number of issues that should be important to the FCC's analysis. For example, Chipty notes that critics of consolidation worry that consolidation is associated with "too much voice-tracked (not enough live) and too little local content."[173] However, she does not analyze the impact of consolidation on the amount of voice-tracking or on local content. Further, while Chipty states that she calculated the percentage of airplay dedicated to each content type coded for in the Edison data,[174] she only reports selective results.[175]

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[170] *Id.*
[171] *Id.*
[172] *Id.*
[173] *Id.* at 2.
[174] *Id.* at 13. The Edison database is an FCC commissioned database that collected airplay content information for a sample of 1,014 US radio stations, recording content in 5-second increments and categorizing them along several dimensions, including content type. *Study 5* at 12.
[175] For example, in many cases, she reports only the AM and evening dayparts, instead of all dayparts. *Study 5*, Related Data.

Even where the study does report findings, in many cases, they are irrelevant to the Commission's public interest analysis. One example is Study 5's conclusion that "owners with several local stations offer longer, uninterrupted blocks of sports programming in the evening."[176] Even when the Commission used to utilize processing guidelines to ensure that radio stations broadcast sufficient amounts of news, public affairs and other non-entertainment programming, it did not concern itself with whether stations broadcast sports.[177] In deregulating radio in 1981, the Commission concluded that the quantity and quality of non-entertainment programming was "of no substantial utility" to its public interest analysis and that the "only non-statutory programming obligation of a radio broadcaster should be to discuss issues of concern to its community of license."[178] Unfortunately, Study 5 provides no analysis of whether radio stations are discussing issues of concern to their communities of licenses.

Some parts of Study 5, particularly those analyzing news quantity, may be relevant to the Commission's public interest analysis. In the *2002 Biennial Review Order* the Commission found that "viewpoint diversity is most easily measured through news and public affairs programming."[179] It explained, "not only is news programming more easily measured than other types of content containing viewpoints, but it relates most directly to the Commission's core policy objective of facilitating robust democratic discourse in the media."[180]

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[176] *Study 5* at 3.
[177] *See e.g. Applications of TAFT Broadcasting Company*, 38 FCC 2d 770 (1973) ("The Commission, in determining whether a renewal applicant has met the public interest standard, examines the station's informational programming -- i.e., news, public affairs, and all other programming, exclusive of entertainment and sports.")
[178] *Deregulation of Radio*, Report and Order, 84 F.C.C. 2d. 968, 977 (1981).
[179] *2002 Biennial Review Order*, 18 FCC Rcd at 13631.
[180] *Id.*

However, we believe that all of Study 5's findings regarding news must be regarded with caution. The data used in Study 5 comes from the Edison database, which Chipty notes has a "substantial missing data problem."[181] But, even more importantly, we question the reliability of the program coding in the Edison database. For example, Study 5 states that the top four news programs in the Edison Database are: "Coast to Coast AM," "The Rush Limbaugh Show," "Sean Hannity," and "Savage Nation."[182] None of these fit within the traditional definition of news. "Coast to Coast AM" is a syndicated radio talk show that focuses on the paranormal.[183] "Rush Limbaugh", "Sean Hannity," and "Savage Nation" are commonly known as political talk shows.[184] It is unclear why these programs were classified as news when the Edison database has a separate category for talk shows.[185] If the coding of programs is not reliable, then any findings based on those codings is not reliable either. Another problem, of course, is that these are nationally syndicated programs, and are not addressing local community issues, which should be the focus of the FCC's public interest analysis.

But even assuming *arguendo* the validity of the coding, the findings regarding the relationship between ownership and quantity of news are mixed at best. Study 5 finds that the effect of common ownership of local FM stations "is to reduce the percent of live programming in the AM drive, the percent of news program in the AM drive, and reduce the average length of

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[181] *Study 5* at 36.
[182] *Study 5* at 37.
[183] *See* http://www.coasttocoastam.com/shows/2007/09/ (shows from its last week of September included "Peru Meteorite & Cat Mutilations," "Cosmology, Star Trek & Evolution," "Dream Explorations," and "The Path of Nonduality").
[184] Paul Farhi, *Cool Reception for Conservative Radio*, WASH. POST. Jul. 6, 2007, at C05, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2007/07/05/AR2007070501912.html.
[185] *Study 5* at 37.

an uninterrupted block of news in the AM drive."[186] Nationally, increased radio ownership is "associated with less news and shorter blocks of news in the evening."[187] On the other hand, it finds that "more concentrated markets offer more local programming, more news, and more advertising in the AM drive and less local programming, less news, and less advertising in the evening, relative to less concentrated markets."[188] Chipty does not address how these inconsistencies might be interpreted. She concludes that owners with several local stations offer longer, uninterrupted blocks of sports programs in the evenings at the expense of other types of programs. But otherwise, "ownership structure generally does not have much of an effect, either statistically or in terms of practical magnitude, on programming content."[189] Thus, the study cannot possibly provide support for allowing further radio consolidation.

In sum, the studies that examine radio find that consolidation has reduced diversity and competition and has had at best a mixed impact on format variety and quantity of news, and thus, they support tightening rather than further relaxing of the radio ownership limits.

Conclusion

For the foregoing reasons, Commenters respectfully advise that the Commission cannot base any rule changes on the ownership studies, and that the studies actually support retaining

[186] *Id.* at 33.
[187] *Id.* at 32.
[188] *Id.* at 31.
[189] *Id.* at 44. In another instance, Chipty draws a conclusion that does not seem supported by the data. She states that the "analysis suggests that common ownership results in more diversity in actual non-music programs aired." *Id.* at 44. Yet, she finds "a 5 to 7% overlap in the actual news programs aired on commonly owned news station-pairs within the same market." *Id.* at 44-45.

the prohibition against newspaper-broadcast cross-ownership and tightening the local television, radio and television-radio cross-ownership limits.

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